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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Sierra Club Legal Defense Fund a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV) .

[2 August 1991]

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1990/7, entrusted Mrs. Fatma Zohra Ksentini with the task of preparing a study on human rights and the environment. The Commission on Human Rights, in its resolution 1991/44, endorsed the decision of the Sub-Commission and requested the Secretary-General to invite non-governmental organizations to provide the Special Rapporteur with information useful to her work on the study.

2. The Sierra Club Legal Defense Fund presented an issue paper to the Special Rapporteur and to the Commission in Feburary 1991. In addition, it hosted a series of meetings with the Special Rapporteur and the Secretariat at

our headquarters in San Francisco from 28 April to 4 May 1991. During that period, we arranged for the Special Rapporteur to meet with a number of non-governmental organizations in consultative status with the Economic and Social Council, organizations of indigenous peoples in North, Central and South America, as well as organizations involved with worldwide environmental concerns. The Legal Defense Fund and many of the other participating organizations presented the Special Rapporteur with written materials and oral testimony on issues of concern.

3. The Sierra Club Legal Defense Fund has also prepared an issue paper for the forty-third session of the Sub-Commission. The paper sets out the development of this issue at the Sub-Commission and Commission, the supportive work of the Sierra Club Legal Defense Fund, and a number of issues we think essential to develop in the course of work on the study. This statement discusses one of those issues: the right to information.

The right to information

4. The right to information, set out in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, 1/ is essential to protect human rights relating to environmental concerns. In truth, it will not be possible to address environmental problems at all without this freedom.

5. The right to information is essential for any number of environmental purposes. Some of the most important are:

(a) Individuals, communities and neighbouring countries must have information regarding specific hazardous materials and conditions at industrial facilities located in their vicinity for disaster planning and response wherever there is a danger of large-scale industrial accidents like those at Chernobyl and Bhopal; 2/

(b) Individuals, communities and neighbouring countries must have information regarding the full range of environmental consequences of proposed development projects in their regions in order to participate meaningfully in decisions that could adversely affect them due to increased pollution, loss of land base, dislocation, and other impacts;

(c) Individuals, communities and neighbouring countries must have information regarding pollutants and wastes associated with industrial and agricultural processes so that they can make informed choices among alternative paths for growth, development, and waste disposal so as to protect basic human rights to health and quality of life.

6. The Secretary-General, in his progress report to the Preparatory Committee for the United Nations Conference on Environment and Development entitled "Environment and development education and public awareness", 3/ commented specifically on the need for environmental education and information: "While the needs are high so are the benefits of actions and the costs of inaction." 4/

7. In the view of the Sierra Club Legal Defense Fund the right to information has two important aspects: (1) the right to the free flow of information and (2) the right of access to accurate, relevant information. International action in this area reflects these two aspects. For example article 1 of the draft Declaration on Freedom of Information provides, in pertinent part: "[t]he right to know and the right freely to seek the truth are inalienable and fundamental rights of man." 5/ Article 4 provides that those who disseminate information have a duty of good faith to report accurately on the facts. These provisions clearly reinforce the right of access to accurate, relevant information.

8. It is clear that both the "free flow" and "accurate and relevant" aspects of the right to information impose a duty on Governments. Article 2 of the Declaration sets out governmental duties relating to "free flow". Other provisions of international instruments stress the "accurate and relevant" aspect. For example, in the Convention on the International Right of Correction, Governments in countries where incorrect, distorted or damaging information about other Governments has been disseminated are required to release a correcting statement (called a "communiqué") provided by the injured Government. 6/ The "accurate and relevant" aspect is also strongly present in the set of principles adopted by UNESCO on which a new world information and communication order could be based. 7/ The good-faith duty imposed by article 4 of the Declaration applies to any disseminator, including Governments. 8/

9. Applying these rights and duties to the field of the environment requires the recognition of a right to reliable ecological information and the right to ensure its free flow both within countries and across international borders. This right not only protects individuals and groups, but also Governments themselves. One of the areas of great conflict in the issue of human rights and the environment has been that certain Governments of developed countries or multinational enterprises do not want to be obliged to provide full disclosure on potential environmental/human rights dangers. Rather, they seek a situation of maximum ignorance on the part of the Governments from whom they wish to extract highly lucrative development contracts. Many Governments have been persuaded by promises of great national benefit, which all too frequently turn into benefit for the exploiting country and a severe detriment to the developing country in terms of the environment and the whole range of human rights. 9/

10. The United Nations itself has recognized the importance of information in the area of environment. For example, the Department of Public Information has now released Status of World Environment in Mexico, Italy and Japan in the local languages, thereby greatly enhancing international dissemination of this important work. 10/ The General Assembly, in its resolution 45/76 entitled "Questions relating to information" of 4 December 1990 has also mandated that the Department pay particular attention to both human rights and the environment in its information activities.

11. The Sierra Club Legal Defense Fund hopes that the Special Rapporteur on human rights and the environment will devote attention to this topic as work proceeds on the study. As stated in Only One Earth, Governments must recognize:

> "the right of individuals to know and to have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect upon the environment, and the right to legal remedies and redress for those whose health or environment has been or may be seriously affected." 11/

Notes

1/ Both of these article 19 texts protect the rights to freedom of opinion and expression, and to seek, receive and impart information through any media, regardless of national boundaries.

2/ Such catastrophes can also have long-range economic impacts both within and outside the affected country. These impacts have important human rights implications as well. For example, an ecological catastrophe can remove from use large areas of a country's agricultural or other land base or waters, result in a large number of injured and homeless persons, and create a whole population of environmental refugees.

3/ A/CONF.151/PC/21.

4/ Ibid., para. 11.

5/ Economic and Social Council resolution 756 (XXIX) (1960). Regrettably, this Declaration has been languishing in the General Assembly since 1980, when it last appeared on the Assembly's agenda.

6/ United Nations, Treaty Series, vol. 439, No. 191. Unfortunately, this important convention has been ratified by only 12 countries: Burkina Faso, Cuba, Cyprus, Egypt, El Salvador, Ethiopia, France, Guatemala, Jamaica, Sierra Leone, Uruguay and Yugoslavia.

7/ UNESCO General Conference, resolution 21 C/4.19 (Belgrade, 1980).

8/ Other important documents in this field have stemmed from UNESCO's regional intergovernmental conferences. Of particular interest are the Kuala Lumpur declaration (UNESCO Intergovernmental Conference on Communication Policies in Asia and Oceania (1979) and the Yaoundé Declaration (UNESCO Intergovernmental Conference on Communication Policies in Africa (1980) (which stress the rights freely to inform and be informed).

9/ The human rights affected frequently include the right to self-determination and to sovereignty over natural resources. Developing countries can be left with their natural resources decimated, environmental problems overtaking all aspects of life, and literally no independent ability to develop economies capable of providing even subsistence for the majority of their peoples. The case of Haiti illustrates this tragedy.

10/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 21 (A/45/21), p. 35.

11/ L. Timberlake, Only One Earth (the book of the BBC series of that name) (BBC 1987).